

REMARKS

Please reconsider the application in view of the above amendments and the following remarks. Applicant thanks the Examiner for carefully considering this application.

Disposition of Claims

Claims 3 and 6 are withdrawn. Accordingly, claims 8-9, 11-12, and 15-16 are also withdrawn because they depend, directly or indirectly, from claim 3 or 6. Therefore, claims 1-2, 4-5, and 7, 10, and 13-14 are pending. Claim 1 is independent. The remaining claims depend, directly or indirectly, from claim 1.

Claim Amendments

Claim 1 has been amended to correct a typographic error and to clarify the invention recited. This amendment is supported by the specification, e.g., paragraphs [0030], [0035], and [0060]. Claims 4-5, 7, 10, and 13-14 have been amended to method claims. No new matter is introduced by this amendment.

Specification

The title of the present invention on page 1 has been amended. The new title is "A METHOD FOR TREATING ISCHEMIA".

Claim Objections

Claims 4-5 and 7-16 are objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim.

Claims 8-9, 11-12, and 15-16 have been withdrawn. Claims 4-5, 7, 10, and 13-14 have been amended to method claims.

Claim Rejections under 35 U.S.C. §112

Claims 4-5 and 7-16 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claims 8-9, 11-12, and 15-16 have been withdrawn. Claims 4-5, 7, 10, and 13-14 have been amended. To the extent that this rejection may still apply to the amended claims, this rejection is respectfully traversed.

Claims 4-5 and 13 require the same components as claim 1 and fail to further limit the agent of claim 1.

Claims 4-5 and 13 have been amended to recite a method for treating ischemia-related diseases using the same components as claim 1. Accordingly, withdrawal of this rejection is respectfully requested.

Claims 7, 10, and 14 require the same components as claim 2 and fail to further limit the agent of claim 2.

Claims 7, 10, and 14 have been amended to recite a method for treating ischemia-related diseases using the same components as claim 2. Accordingly, withdrawal of this rejection is respectfully requested.

Claims 8, 11, and 15 require the same components as claim 3 and fail to further limit the agent of claim 3.

Claims 3, 8, 11, and 15 have been withdrawn. This rejection therefore is moot.

Claims 9, 12, and 16 require the same components as claim 6 and fail to further limit the agent of claim 6.

Claims 6, 9, 12, and 16 have been withdrawn. This rejection therefore is moot.

Claim Rejections under 35 U.S.C. §102(b)

Claims 1-16 are rejected under 35 U.S.C. 102(b) as being anticipated by Tabata et al. (Biomaterials 20:2169-2175, 1999) (hereinafter "Tabata") as evidenced by Wunderlich et al. (hereinafter "Wunderlich"). Claim 1 has been amended. To the extent that this rejection may still apply to the amended claims, this rejection is respectfully traversed.

The present invention relates to a method for treating ischemia using an agent comprising a vascularization induction factor and a gelatin hydrogel that allows gradual release of the vascularization induction factor. Specifically, claim 1 recites "An ischemia therapeutic agent that comprises a vascularization induction factor and a gelatin hydrogel made by emulsification with oil, and gradually releases the vascularization growth factor." In contrast, Tabata does not disclose the emulsification step for the preparation of gelatin hydrogels (page 2170) as required by the amended claim 1.

To anticipate a claim, the prior art reference must disclose every limitation of the claim. Because Tabata fails to disclose at least one limitation of the amended claim 1, the amended claim 1 is patentable over Tabata. The remaining claims 2-16 should also be patentable for at least the same reasons because they depend, directly or indirectly, from claim 1. Accordingly, withdrawal of this rejection is respectfully requested.

The Applicant respectfully disagrees with the Examiner's assertion that the zeta potential and the molecular weight of the gelatin recited in claim 2 are inherently anticipated by Tabata. Under the principles of inherency, the prior art anticipates the claims if it *necessarily* functions in accordance with, or includes, the claimed limitations. [See, e.g., *Mehl/Biophile International Corp. v. Milgraum*, 192 F.3d 1362, 52 USPQ2d 1303 (Fed. Cir. 1999); *Atlas Powder Co., v. Ireco Inc.*, 190 F.3d 1342, 1347, 51 USPQ2d 1943, 1946 (Fed. Cir. 1999)] Since Tabata fails to disclose the limitation of "a gelatin hydrogel made by emulsification with oil" as required by the amended claim 1, the zeta potential and molecular weight of the claimed gelatin cannot be inherently anticipated by Tabata.

Further, Wunderlich is not a proper prior art reference to support the notion that the molecular weight is inherent to the claimed gelatin, because Type A gelatin (as disclosed by Wunderlich) has a different zeta potential as compared with that of the gelatin recited in claim 2. Namely, Type A gelatin has a zeta potential of 0 ~ 5 mV (paragraph [0020]), whereas, the claimed gelatin has a zeta potential of -15 ~ -20 mV.

Conclusion

Applicant believes this reply is fully responsive to all outstanding issues and places this application in condition for allowance. If this belief is incorrect, or other issues arise, the Examiner is encouraged to contact the undersigned or his associates at the telephone number listed below. Please apply any charges not covered, or any credits, to Deposit Account 50-0591, Pin No. 5883, Reference 17195/005001.

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Respectfully submitted,

By: 

Jonathan P. Osha

Registration No.: 33,986

OSHA · LIANG LLP

1221 McKinney St., Suite 2800

Houston, Texas 77010

(713) 228-8600

(713) 228-8778 (Fax)

Attorney for Applicant